

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY SEOUL IMMEDIATE
AMEMBASSY TOKYO IMMEDIATE

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TOKYO FOR HOLBROOKE AND GLEYSTEN

E.O. 11652: N/A

TAGS: HGOV, KS

SUBJECT: DEPUTY SECRETARY'S TESTIMONY ON ETHICS
COMMITTEE RESOLUTION

REF: STATE 127480

THE FOLLOWING TESTIMONY WAS PREPARED FOR DELIVERY BY
DEPUTY SECRETARY CHRISTOPHER BEFORE THE HOUSE INTERNATIONAL
RELATIONS COMMITTEE ON MAY 22. BEGIN TEXT. "MR. CHAIRMAN,
MEMBERS OF THE COMMITTEE: I AM PLEASED TO APPEAR BEFORE
YOU TODAY TO GIVE THE VIEWS OF THE DEPARTMENT OF STATE ON
THE HOUSE RESOLUTION WHICH PROVIDES THAT NO APPROPRIATION
OF FUNDS FOR KOREA FOR NON-MILITARY PURPOSES SHOULD BE
APPROVED UNTIL FORMER KOREAN AMBASSADOR KIM DONG-JO IS MADE
AVAILABLE FOR TESTIMONY.

WE SHARE THE DESIRE OF THE CONGRESS TO BRING THE INVESTI-
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GATIONS TO A SATISFACTORY CONCLUSION AS QUICKLY AS POSSIBLE.
BUT WE REGRET THAT WE MUST OPPOSE THIS RESOLUTION ON
SEVERAL GROUNDS.

FIRST, IT IS NECESSARY TO OPPOSE THE RESOLUTION BECAUSE IT
CONFLICTS WITH THE PROVISIONS OF THE VIENNA CONVENTION ON
DIPLOMATIC RELATIONS, IN THAT IT SEEKS TO COMPEL A FORMER

AMBASSADOR TO THE UNITED STATES FROM ANOTHER SOVEREIGN NATION TO GIVE TESTIMONY REGARDING HIS SERVICE AS AMBASSADOR.

THE VIENNA CONVENTION, A TREATY AMONG 125 NATIONS INCLUDING THE UNITED STATES, IS A COMPREHENSIVE BODY OF LAW GOVERNING THE RIGHTS AND OBLIGATIONS OF DIPLOMATS AND OF THE STATE ON WHOSE TERRITORY THEY PERFORM THEIR FUNCTIONS.

ARTICLE 31 OF THE VIENNA CONVENTION CONFERS ON A DIPLOMAT IMMUNITY FROM THE CRIMINAL JURISDICTION OF THE HOST STATE, AND FROM CIVIL AND ADMINISTRATIVE JURISDICTION RESPECTING ACTS PERFORMED IN HIS DIPLOMATIC CAPACITY. IT FURTHER PROVIDES THAT "A DIPLOMATIC AGENT IS NOT OBLIGED TO GIVE EVIDENCE AS A WITNESS." THAT IMMUNITY ENCOMPASSES THE GIVING OF EVIDENCE IN ANY PROCEEDING AND BEFORE ANY BODY -- JUDICIAL, ADMINISTRATIVE OR LEGISLATIVE.

WHILE AMBASSADOR KIM IS NO LONGER AN ACCREDITED DIPLOMAT TO THE UNITED STATES, THE IMMUNITY CONFERRED IN ARTICLE 31 AS AMBASSADOR IS EXPLICITLY CONTINUED IN FORCE BY ARTICLE 39 OF THE CONVENTION.

SUCH GOVERNMENTAL COERCION TO OBTAIN A WAIVER OF IMMUNITY WOULD HAVE SERIOUS IMPLICATIONS FOR U.S. DIPLOMATS ABROAD. IF THE UNITED STATES TAKES THE LEAD IN APPLYING ECONOMIC LIMITED OFFICIAL USE

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OR OTHER INFLUENCE TO COERCE A WAIVER, THEN SURELY WE WILL BE IN NO POSITION TO COMPLAIN SHOULD OTHER COUNTRIES EXERT COMPARABLE PRESSURE ON US. SUCH COUNTRIES COULD CORRECTLY CLAIM THEY WERE DOING NO MORE THAN FOLLOWING OUR EXAMPLE.

IN THE ABSENCE OF THE PROTECTION AFFORDED BY THE VIENNA CONVENTION, IT IS NOT DIFFICULT TO FORESEE INSTANCES IN WHICH OUR AMBASSADORS SERVING ABROAD COULD BE PUT IN UNTENABLE SITUATIONS. FOR EXAMPLE, IT HAS LONG BEEN AN ACCEPTED PART OF THE DIPLOMATIC FUNCTION TO MAINTAIN INFORMAL CONTACT WITH OPPOSITION LEADERS AND OTHER PUBLIC FIGURES OUTSIDE THE GOVERNMENT OF THE HOST COUNTRY. WHAT WOULD BE THE IMPLICATIONS IF AN AMERICAN AMBASSADOR WERE CALLED UPON TO TESTIFY ON THE DETAILS OF THE CONTACTS WITH SUCH OPPOSITION LEADERS?

IT IS COMMON DIPLOMATIC PRACTICE FOR EMBASSY PERSONNEL TO GATHER INFORMATION FROM GOVERNMENT OFFICIALS AND DIPLOMATS OF OTHER GOVERNMENTS ON A PRIVATE AND CONFIDENTIAL BASIS. WHAT IMPACT WOULD IT HAVE IF OUR DIPLOMATS WERE COMPELLED TO GIVE TESTIMONY BEFORE A FOREIGN TRIBUNAL OR LEGISLATURE REGARDING SUCH ACTIVITIES? MORE BROADLY, WHAT IF THE

AMBASSADORS WERE FORCED TO TESTIFY ABOUT THEIR REPORTS TO WASHINGTON?

IF WE SET A PRECEDENT BY DISREGARDING THE VIENNA CONVENTION, WE CAN BE SURE THAT IT WILL BE USED AGAINST US. I THINK ALL OF US CAN APPRECIATE FULLY JUST HOW DAMAGING THIS MIGHT BE TO THE CONDUCT OF OUR FOREIGN RELATIONS.

MR. CHAIRMAN, THE DEPARTMENT HAS PREVIOUSLY STATED ITS VIEWS ON THIS SUBJECT IN A LETTER OF FEBRUARY 18, 1978, TO CONGRESSMAN WOLFF. MAY I REQUEST THAT THAT LETTER BE INCORPORATED INTO THE RECORD OF THIS HEARING.

THE SECOND GROUND ON WHICH WE ARE OPPOSED TO THE RESOLUTION IS LIMITED OFFICIAL USE

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THE FIRST GROUND OF OPPOSITION IS THAT THE RESOLUTION IS THAT IT COULD HAVE AN UNDESIRABLE EFFECT ON IMPORTANT SECURITY INTERESTS IN KOREA AND IN NORTHEAST ASIA AS A WHOLE. WHILE THE RESOLUTION WOULD NOT PROHIBIT MILITARY ASSISTANCE, IT COULD NEVERTHELESS HAVE A SEVERE IMPACT ON THE PERCEPTION OF OTHER GOVERNMENTS, PARTICULARLY NORTH KOREA, AS TO THE STRENGTH OF OUR COMMITMENTS TO SOUTH KOREA. IT IS NOT AN EXAGGERATION TO SAY THAT IT WAS A MISAPPREHENSION OF THIS SORT THAT LED TO THE NORTH KOREAN ATTACK ON THE SOUTH IN JUNE OF 1950.

IN SOUTH KOREA, ADOPTION OF THIS RESOLUTION WOULD INEVITABLY GIVE RISE TO DOUBTS ABOUT THE RELIABILITY OF THE UNITED STATES AS A PARTNER. IT WOULD ALSO CONCERN THE JAPANESE, GIVEN THE GREAT IMPORTANCE TO THEM OF STRONG U.S. SUPPORT FOR KOREA. SUCH REACTIONS COULD ONLY HARM OUR OWN IMPORTANT SECURITY INTERESTS IN THOSE COUNTRIES AND IN THE NORTHEAST ASIAN REGION AS A WHOLE.

A THIRD GROUND OF OPPOSITION IS THAT THE RESOLUTION FAILS TO GIVE SUFFICIENT WEIGHT TO KOREA'S RECORD OF COOPERATION IN THE INVESTIGATIONS BEING CONDUCTED BY THE JUSTICE DEPARTMENT AND THE CONGRESS. THE TONE AND THRUST OF THE RESOLUTION SEEM MORE APPROPRIATE TO A SITUATION IN WHICH THE KOREAN GOVERNMENT HAD STOUTLY REFUSED TO ASSIST IN THE INVESTIGATION IN ANY WAY.

KOREAN COOPERATION IS PROBABLY BEST EXEMPLIFIED BY THE ARRANGEMENTS WORKED OUT WITH RESPECT TO TONGSUN PARK. AS YOU KNOW, HE HAS ALREADY TESTIFIED BEFORE CONGRESSIONAL COMMITTEES, AND HE RECENTLY RETURNED TO THE UNITED STATES A SECOND TIME TO GIVE FURTHER TESTIMONY.

HOWEVER, THIS RESOLUTION CONCERNS THE TESTIMONY BY A FORMER LIMITED OFFICIAL USE

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MER DIPLOMAT, WHICH IS A FUNDAMENTALLY DIFFERENT ISSUE AND WHICH RAISES PARTICULARLY DIFFICULT ISSUES OF SOVEREIGNTY FOR KOREA. KOREA IS CONSTANTLY BOMBARDED IN THE INTERNATIONAL ARENA BY NORTH KOREAN PROPAGANDA ALLEGING THAT SEOUL IS MERELY A PUPPET OF THE UNITED STATES.

THE MEMBERS OF THIS COMMITTEE ARE WELL AWARE THAT SUCH ALLEGATIONS ARE WITHOUT FOUNDATION. HOWEVER, IF WE ATTEMPT TO USE GOVERNMENTAL COERCION AND SANCTIONS TO FORCE A WAIVER OF IMMUNITY BY THE KOREANS, WE WILL HAVE FUELED SUCH MALICIOUS CHARGES.

THE REPUBLIC OF KOREA HAS, HOWEVER, MADE AN EFFORT TO FIND A MUTUALLY SATISFACTORY SOLUTION. IT IS OUR UNDERSTANDING THAT FORMER AMBASSADOR KIM HAD INDICATED A WILLINGNESS TO EXPLORE THE MATTERS INVOLVED IN TELEPHONE CONVERSATIONS WITH APPROPRIATE REPRESENTATIVES OF THE CONGRESS. SUCH CONVERSATIONS COULD THEN BE FOLLOWED BY A LETTER FROM THE FORMER AMBASSADOR ATTESTING TO THE INFORMATION AND CONCLUSIONS WHICH HIS VOLUNTARY TELEPHONE CONVERSATIONS HAD DEVELOPED. WHILE WE CAN UNDERSTAND THAT THIS SUGGESTED PROCEDURE MAY BE LESS THAN FULLY SATISFACTORY, WE HAD HOPED THAT IT WOULD PROVIDE THE BASIS FOR FURTHER DISCUSSION AND ULTIMATE AGREEMENT.

MR. CHAIRMAN, THE DEPARTMENT OF STATE FULLY UNDERSTANDS THE IMPORTANCE OF PURSUING THE INVESTIGATIONS IN A DILIGENT AND THOROUGH MANNER. INDEED, WE REGRET THAT A MEANS HAS NOT YET BEEN FOUND TO MEET THE REQUIREMENTS OF THE ETHICS COMMITTEE IN A WAY THAT DOES NOT VIOLATE OUR TREATY COMMITMENTS AND DOES NOT RAISE BASIC ISSUES OF SOVEREIGNTY.

WE DO NOT SHARE THE CONCLUSION THAT SOUTH KOREA HAS FINALLY DETERMINED THAT THE TRUTH WILL BE WITHHELD FROM THE CONGRESS. WE BELIEVE THAT OPPORTUNITY EXISTS FOR FURTHER DISCUSSION. WHILE WE WILL NOT EXERT PRESSURE IN CONTRA-

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VENTION OF OUR TREATY COMMITMENTS, WE DO NOT BELIEVE THAT EITHER PARTY HAS STOPPED OR SHOULD STOP ITS SEARCH FOR A SOLUTION. WE REMAIN PREPARED TO FACILITATE, IN ANY APPROPRIATE WAY, CONTINUING CONSIDERATION OF THESE PROBLEMS.

FOR THE REASONS I HAVE OUTLINED, MR. CHAIRMAN, WE URGE

THAT THIS COMMITTEE NOT ADOPT THE PROPOSED RESOLUTION."
END TEXT. VANCE

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